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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/589,633	11/01/2006	Robert Neugebauer	NEUGEBAUER ET AL-2 PCT	9729
25889	7590	05/02/2008	EXAMINER	
COLLARD & ROE, P.C. 1077 NORTHERN BOULEVARD ROSLYN, NY 11576			REICHLE, KARIN M	
			ART UNIT	PAPER NUMBER
			3761	
			MAIL DATE	DELIVERY MODE
			05/02/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/589,633	<b>Applicant(s)</b> NEUGEBAUER ET AL.	
	<b>Examiner</b> Karin M. Reichle	<b>Art Unit</b> 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 01 November 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17, 24 and 25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17, 24 and 25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 November 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11-1-06</u> .   | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Specification***

### ***Drawings***

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the invention as claimed in claim 16 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to because Figure 2 and the description thereof are inconsistent, i.e. as best understood, Figure 2, shows more than just a cutting line, i.e. appears to

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show strips 1 and 2. In Figure 6c, the lines from 11 should be dashed. In Figure 3, 13 does not denote the user end. In Figure 6d the line from the uppermost 11 should be dashed. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### ***Description***

3. The abstract of the disclosure is objected to because legal terminology, i.e. "said", should be avoided. Correction is required. See MPEP § 608.01(b).

4. 35 U.S.C. 112, first paragraph, requires the specification to be written in "full, clear, concise, and exact terms." The specification is replete with terms which are not clear, concise and exact. The specification should be revised carefully in order to comply with 35 U.S.C. 112,

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first paragraph. Examples of some unclear, inexact or verbose terms used in the specification are: paragraph 2.

5. The disclosure is objected to because of the following informalities: The paragraph added before line 1 on page 1 should also include a paragraph number. The various sections of the application should be identified in accordance with 37 CFR 1.77(b). In Figure 3, what is “VI”?

Appropriate correction is required.

### ***Claim Objections***

6. Claims 9, 12-13, 17 and 25 are objected to because of the following informalities: In claim 9, should “runs...to” be--runs, at least in part, essentially along --? Also in claims 12 and 13, should “exclusively” be --only--? In claim 13, line 2, should “and” be --an--? Since claims 17 and 25 are considered to be claims depending from claim 1, the preambles are considered inconsistent. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

7. Claims 1-17 and 24-25 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In regard to claim 1, lines 2-3, it is unclear whether the narrower range/limitation, i.e. “in particular...diaper”, further limits the broader range/limitation, i.e. “hygiene item”, or not? This also applies to similar language in claim 17 and the preferences set forth with regard to the film and embossing respectively in claims 3 and 6. In claim 1, the

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relation of the tape end to the closing area defined by the terminology “to be assigned to” is unclear, i.e. is the tape end adjacent the closing area? In claims 8-9 and 11, is the edge in these claims and the end in claim 1 one and the same? In claims 12-16, are the grip areas in these claims and that of claim 1 one and the same, i.e. how many grip areas at a minimum are being claimed in each of these claims? With regard to claim 17, a clear structural antecedent basis for “a diaper fastening tape according to Claim 1” should be defined (Note the discussion of claim 1, lines 2-3 supra).

### ***Claim Language Interpretation***

8. Other than the claim language “like a film” set forth in paragraph 18, the remainder of the claim language has not been explicitly and thereby will be given its usual, e.g. dictionary, definition. It is noted that the numerals within parenthesis while not indefinite also do not further limit the text of the claims. With regard to claims 1, 17, 3 and 6, see discussion in the preceding paragraph, these claims are interpreted to require only the broader range/limitation at a minimum. With regard to claims 17 and 25, as best understood, see discussion infra, claim 17 is interpreted as requiring the tape of claim 1 and claim 25 is interpreted to further require such tape having a closing area which comprises a plurality of hooks (Note 37 CFR 1.75 also). “Separate” as defined by the dictionary is “to space apart; scatter” and “macroscopic” is defined as “large enough to be perceived or examined without instrumentation, esp. as by the unaided eye”. Claims 8-9 and 11 are interpreted to require an edge which may or may not be the same as the end. Claims 12-16 are interpreted to require at least the number of grip areas claimed therein, i.e. the grip area of claim 1 is considered to be one and the same.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1-3, 5-15, 17, 24 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Long et al '389 .

Claim 1: See paragraphs 6-7 and the Claim Language Interpretation section supra, hereinafter referred to as CLI, and '389 at the Figures and col. 3, lines 53 et seq, col. 15, lines 14-43, col. 16, lines 50-60, esp. line 60, col. 16, line 61-col. 17, line 31, col. 17, line 60-col. 18, line 16, col. 18, lines 32-59, col. 20, lines 17-60, col. 22, line 22-col. 23, line 18, col. 23, lines 53-56 , line, i.e. '389 teaches a fastening tape 36 for a hygiene item 10 which is a diaper having a fastening area, adjacent 38 for permanent fastening on the hygiene item and having a closing area 56 for simultaneous detachable joining to a surface of the hygiene item, a protruding section, e.g. adjacent 90, see, e.g., Figures 5-6, between the closing area and a tape end to be assigned to the closing area, 90 as best understood, wherein the protruding section has a “separate” grip area, see CLI, 54 and, e.g., col. 23, lines 53-56 (It is noted that the claim language “separate grip area” does not require individual pieces of material, only spacing), with a “macroscopically” structured surface (It is noted that the surface of the area be “macroscopic”/“visible” to the unaided eye), see CLI and, e.g., col. 22, lines 22-59 and Figures. It is the Examiner's first position that '389 explicitly teaches a “macroscopically” structured surface. In any case, i.e. the Examiner's second position, since '389 teaches all the claimed

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structure and/or the dimensions, shapes and/or colors of the grip area, there is sufficient factual evidence for one to conclude that such area also inherently includes the same function thereof, i.e. “macroscopic”/“visible” to the unaided eye.

Claim 2: The separate grip area has a structurally separate component, see again col. 23, lines 53-56.

Claim 3: The structurally separate component is a film, see CLI, and, e.g., col. 16, lines 42-49, and thereby ‘429 at col. 16, lines 21-22, ‘382 at col. 23, lines 12-13 and col. 20, lines 38-51.

Claim 5: The structured surface has embossing, see col. 20, lines 38-60, especially lines 44-46 (It is noted that “emboss” is defined as “to decorate with or as if with a raised design”).

Claim 6: The embossing has a plurality of straight and/or curved lines, see CLI and the discussion of claim 5.

Claim 7: The grip area is arranged on a grip edge of the protruding section, see, e.g., portion of 54 adjacent 90 in Figures 5-6B.

Claim 8: The grip area is arranged with an offset to a tape edge of the protruding section, as best understood, see paragraph 7 and CLI supra, e.g. the portion of 54 remote from 90 in Figures 5-6B or see 41 of 54 in Figure 10 (It is noted that the claim does not require the entirety of the grip area be offset).

Claim 9: The grip area is designed in strips and runs at least partially essentially according to a grip edge and/or a tape edge in its shape, as best understood, see paragraphs 6-7 and CLI supra, e.g., 41 in Figures 5 and 6 adjacent 90, or alternating 41 in Figure 10, or col. 20, lines 52-60, col. 16, lines 50-60, col. 17, lines 8-30 and col. 18, lines 3-16 and 32-59.



Claim 10: The grip area runs in a meandering pattern, see discussion of claim 9.

Claim 11: The grip area is approximately the same distance from the closing area as from a tape edge, as best understood, see paragraph 7 and CLI supra, and, e.g., the Figures, e.g. 41 in Figure 7 (It is noted that the specific portion of the grip area which is so distanced has not been specifically claimed nor is such distance required to be greater than 0).

Claim 12: As best understood, see paragraphs 6-7 and CLI supra, only an inside of the fastening tape has a grip area, see, e.g., Figure 1 and Figures 5A-5B.

Claim 13: As best understood, see paragraphs 6-7 and CLI supra, only an outside of the fastening tape has a grip area, see Figures, the discussion of claim 12, the paragraph bridging cols. 14-15, col. 16, lines 18-28, i.e. 50 on the body facing/inward side and 54/56 on garment facing/outward side of 36 or see Figures and note that the claim does not require the outside be the garment facing side, i.e. the outside/tape end of the tape has a grip area.

Claim 14: Both sides of the fastening tape have a common grip area and/or separate grip areas, see, e.g., Figure 11-11A, elements 54 and 102 and col. 22, lines 54-65 or note that the two sides can be, e.g., upper and lower sides/halves of the same surface and Figure 9, element 54.

Claim 15: Two identically shaped and sized grip areas are provided on the two sides of the fastening tape, see, e.g., 54 in Figures 4, 5 and 6 and 102 in Figure 11 or the upper half of 54, i.e. on the upper side of line 9A-9A, and the lower half of 54, i.e. on the lower side of line 9A-9A (It is noted that the grip areas are not required to be spaced or spaced a particular distance from each other).

Claim 17: See CLI, discussion of claim 1 and Figure 1.

Claim 24: The closing area comprises a plurality of hooks 40.

Claim 25: The hygiene item closing area comprises a plurality of hooks 40 and the hygiene item further comprises a frontal tape 50 on an outside surface of the hygiene item, said frontal tape comprising a plurality of loops, see col. 16, lines 3-16, corresponding to the hooks, the hooks and loops forming a two component fastening system.

***Claim Rejections - 35 USC § 102/103***

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 4 and 16 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Long et al '389.

Claim 4 requires the grip area be designed "like a film" and claim 16 requires two separate "film-like" grip areas having different macroscopically structured surfaces, see CLI and the discussion of the claims supra, esp. claims 1-2, 14-15 and '389 at col. 22, lines 21-53, 59-65 and the paragraph bridging cols. 22-23. Therefore it is the Examiner's first position that '389 teaches a grip area "like a film" or two "film-like" grip areas as claimed with "sufficient specificity", see MPEP 2131.03, i.e. the area is at least eight times the thickness. Even if '389 is not "sufficiently specific", since the ranges of the ratios of area dimensions with respect to thickness dimensions of '389 "overlap or lie inside" claimed ranges, see CLI, (In re Wertheim, 541 F.2d 257, 191 USPQ 90 (CCPA 1976); In re Woodruff, 919 F.2d 1575, 16 USPQ2d 1934 (Fed. Cir. 1990) (The prior art taught carbon monoxide concentrations of "about 1-5%" while the

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claim was limited to “more than 5%.” The court held that “about 1-5%” allowed for concentrations slightly above 5% thus the ranges overlapped.); In re Geisler, 116 F.3d 1465, 1469-71, 43 USPQ2d 1362, 1365-66 (Fed. Cir. 1997) (Claim reciting thickness of a protective layer as falling within a range of “50 to 100 Angstroms” considered prima facie obvious in view of prior art reference teaching that “for suitable protection, the thickness of the protective layer should be not less than about 10 nm [i.e., 100 Angstroms].” The court stated that “by stating that suitable protection’ is provided if the protective layer is about’ 100 Angstroms thick, [the prior art reference] directly teaches the use of a thickness within [applicant’s] claimed range.”)), or do not overlap but are close enough to the claimed ranges that one skilled in the art would have expected them to have the same properties (Titanium Metals Corp. of America v. Banner, 778 F.2d 775, 227 USPQ 773 (Fed. Cir. 1985) (Court held as proper a rejection of a claim directed to an alloy of “having 0.8% nickel, 0.3% molybdenum, up to 0.1% iron, balance titanium” as obvious over a reference disclosing alloys of 0.75% nickel, 0.25% molybdenum, balance titanium and 0.94% nickel, 0.31% molybdenum, balance titanium)), a prima facie case of obviousness exists. See MPEP 2144.05.

### ***Conclusion***

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art cited but not applied also includes disclosed/claimed features of the invention or combinations of features.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Karin M. Reichle/  
Primary Examiner, Art Unit 3761

April 25, 2008